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UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

1ST TECHNOLOGY LLC, Plaintiff, v. IQ-LUDORUM PLC, PLAYTECH CYPRUS LTD., TILTWARE LLC, and KOLYMA CORPORATION, A.V.V., Defendants.	Case No.: 2:06-cv-323-LDG-RJJ

PLAINTIFF 1ST TECHNOLOGY LLC'S SUPPLEMENTAL MEMORANDUM IN FURTHER SUPPORT OF ITS OPPOSITION TO DEFENDANT TILTWARE, LLC'S MOTION TO DISMISS FOR IMPROPER VENUE OR, IN THE ALTERNATIVE, FOR TRANSFER OF VENUE

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Plaintiff 1st Technology LLC, by and through its counsel of record HUTCHINSON & STEFFEN, LLC, hereby files this Supplemental Memorandum in Support of its Opposition to Tiltware, LLC's Motion to Dismiss for Improper Venue, or in the alternative for Transfer of Venue. This Supplemental Memorandum is based on the attached Memorandum of Points and Authorities, the Exhibits attached hereto, and the papers and pleadings on file herein in this case.

DATED this 27th day of September, 2006

Respectfully submitted,

W. W. F.

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MEMORANDUM OF POINTS AND AUTHORITIES

As previously discussed in Plaintiff 1st Technology's opposition memorandum (Docket #15), the Court should deny Tiltware's Motion to Dismiss for Improper Venue or, in the alternative, for Transfer of Venue. Additional evidence recently acquired by 1st Technology demonstrates that (1) the Court has personal jurisdiction over Tiltware, (2) venue is proper in this judicial district, and (3) the facts do not warrant a transfer of venue to the Central District of California.

I. VENUE IN NEVADA IS PROPER FOR TILTWARE

Venue in a patent action against a corporate defendant exists wherever there is personal jurisdiction. *Trintec Indus., Inc. v. Pedre Promotional Prod., Inc.*, 395 F.3d 1275, 1280 (Fed. Cir. 2005) (citing *VE Holding Corp. v. Johnson Gas Appliance Co.*, 917 F.2d 1574, 1583 (Fed. Cir. 1990). In its opposition memorandum, 1st Technology provided overwhelming evidence which taken alone clearly demonstrates that this Court has personal jurisdiction over Tiltware, thereby rendering venue in this judicial district proper. (*See* Docket #15 at pp. 4-12). Indeed, Tiltware itself was willing to concede this much in its reply memorandum. (*See* Docket #19 at pp. 1-2).

To the extent that there was ever (or is now) any question as to whether this Court has personal jurisdiction over Tiltware, additional evidence recently obtained by 1st Technology leaves no doubt. In July and August of this year, numerous marketing items were distributed ***in Las Vegas*** during the 2006 World Series of Poker which promote Tiltware's infringing Full Tilt Poker software. (Flachsbart Declaration at ¶2). These items include "The Team Full Tilt Guide to Sin City" as well as an invitation to visit the "Full Tilt Hospitality Suite". (*See* Exhibit

A, promotional items distributed in Las Vegas). The marketing of Tiltware's software in Las Vegas is nothing new. As one poker journalist based in Las Vegas has described:

> ***The Full Tilt "team" of players is for marketing purposes only, attracting attention to Full Tilt's poker site.*** Online poker marketing at the WSOP ["World Series of Poker"] isn't new; there were plenty of online sites represented last year. But Full Tilt's effort completely dwarfs anything done by other major sites.

(Exhibit B, BJ Nemeth, *2005 WSOP: Twenty Down, Twenty-Two to Go*, June 23, 2005) (emphasis added). This year's efforts were equally significant. Notably, Tiltware is doing more than promoting the use of its infringing Full Tilt Poker software in Las Vegas – Tiltware is actually distributing physical copies of the software on CD-ROM. As shown in Exhibit A, copies of Tiltware's infringing software were distributed ***in Las Vegas*** during the 2006 World Series of Poker. (Flachsbart Declaration at ¶2). This evidence not only demonstrates that the Court clearly has personal jurisdiction over Tiltware, but also belies any claim by Tiltware to the effect that venue in this district is improper. It should come as no surprise that Tiltware was willing to concede the propriety of venue in its reply memorandum. (*See* Docket #19 at pp. 1-2).

II. TRANSFER OF VENUE TO CALIFORNIA IS NOT WARRANTED

Tiltware's general presence in Nevada coupled with its willingness to have its infringing Full Tilt Poker software distributed in Nevada are facts which clearly cut against Tiltware's request to have this case transferred to California. Additionally, one of the factors to be considered by the Court in determining whether a transfer of venue is warranted under 28 U.S.C. § 1404(a) is the plaintiff's choice of forum – a factor which Tiltware essentially ignores. *Gulf Oil Corp. v. Gilbert*, 330 U.S. 201, 508 (1947). The Court must balance the preference accorded 1st Technology's choice of forum with the burden of litigating in an inconvenient forum, and Tiltware must make a strong showing of inconvenience to warrant upsetting 1st Technology's choice. *Decker Coal Co. v. Commonwealth Edison Co.*, 805 F.2d 834, 843 (9th Cir. 1986).

Here, 1st Technology chose the District of Nevada as the appropriate venue in which to proceed. This choice was not random. Rather, 1st Technology's choice of forum was based upon (1) Tiltware's presence in Nevada, (2) the availability and accessibility of Tiltware's infringing software in Nevada, and (3) the Court's familiarity with 1st Technology and the patent-in-suit as a result of previous lawsuits filed by 1st Technology in this district. Moreover, 1st Technology recently converted to a Nevada limited liability company, thereby establishing a continuing presence in Nevada. (Exhibit C, 1st Technology LLC's Articles of Conversion and Articles of Organization). This is yet another fact which weighs against transferring this case to California. 1st Technology's choice of forum should not be disrupted. Tiltware's argument that this judicial district is not convenient is ironic in light of the fact that Tiltware appears to be more than willing to travel to Las Vegas when it comes to promoting its infringing Full Tilt Poker software. Transfer of venue to California is not warranted.

III. CONCLUSION

For the foregoing reasons, as well as for those reasons presented in 1st Technology's previous opposition memorandum, 1st Technology respectfully request that the Court deny Tiltware's motions to dismiss and, in the alternative, to transfer venue.

DATED this 27th day of September, 2006

Respectfully submitted,

W. W. [signature]

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